

**IN THE COURT OF APPEALS OF IOWA**

No. 3-134 / 12-0979  
Filed May 30, 2013

**STATE OF IOWA,**  
Plaintiff-Appellee,

**vs.**

**CHARLES EDWARD ROSS,**  
Defendant-Appellant.

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Appeal from the Iowa District Court for Polk County, Karen A. Romano,  
Judge.

A defendant appeals a criminal restitution order in three cases, contending the district court erroneously included amounts that were not part of a pre-discharge court-ordered restitution plan. **AFFIRMED IN PART, REVERSED IN PART, AND REMANDED.**

Robert W. Luedeman, Windsor Heights, for appellant.

Thomas J. Miller, Attorney General, Martha E. Trout, Assistant Attorney General, John P. Sarcone, County Attorney, and Michael Hunter, Assistant County Attorney, for appellee.

Heard by Vogel, P.J., and Vaitheswaran and Bower, JJ.

**VAITHESWARAN, J.**

Charles Ross appeals a criminal restitution order, contending the district court erroneously included amounts that were not part of a pre-discharge court-ordered restitution plan.

***I. Background Proceedings***

Ross was a defendant in three separate criminal proceedings, FECR 164800, FECR 175684, and FECR 181426. The district court imposed judgment and sentence in all three. The court entered a restitution order in FECR 164800. In the remaining two actions, the Department of Corrections prepared restitution plans, but the plans were not approved by the district court.

Ross discharged all of his sentences between 2003 and 2006. Following his discharge, he requested a hearing on restitution the State was seeking to assess. After a hearing in 2012, the district court approved restitution amounts calculated by the clerk of court as follows: \$481.93 in FECR 164800, \$1966.25 in FECR 175684, and \$4356.68 in FECR 181426. This appeal followed.

At oral arguments on this appeal, the parties made several concessions concerning the state of the record and the issues to be decided. They further agreed their positions were essentially aligned. Based on these concessions, this court ordered Ross and the State to prepare a joint statement of stipulated facts and statement of outstanding issues. Their statement is attached and incorporated by reference.

## II. **Analysis**

Iowa Code chapter 910 (2005)<sup>1</sup> addresses restitution. Section 910.1(4) defines “restitution,” as including pecuniary damages to a victim, fines, penalties, surcharges, court-appointed attorney fees, and “court costs including correctional fees approved pursuant to section 356.7.” The legal issue before us is whether the district court erred in assessing restitution that was not judicially approved prior to the discharge of Ross’s sentences. See *State v. Jenkins*, 788 N.W.2d 640, 642 (Iowa 2010) (reviewing for correction of errors at law).

Section 910.3 places the onus on the district court to determine the amount of a defendant’s restitution obligation, based on statements furnished by the county attorney, clerk of court, and/or defendant:

At the time of sentencing or at a later date to be determined by the court, *the court shall set out the amount of restitution* including the amount of public service to be performed as restitution and the persons to whom restitution must be paid. If the full amount of restitution cannot be determined at the time of sentencing, the court shall issue a *temporary order* determining a reasonable amount for restitution identified up to that time. At a later date as determined by the court, the court shall issue a *permanent, supplemental order*, setting the full amount of restitution. The court shall enter further *supplemental orders*, if necessary. *These court orders shall be known as the plan of restitution.*

(Emphasis added.) Under this provision, a plan of restitution is a plan approved by a district court. The amounts of restitution in a restitution plan prepared by the Department of Corrections cannot be reduced to judgment absent approval by the district court. See Iowa Code § 910.3.

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<sup>1</sup> Although different years of the Iowa Code are applicable given the fact that three criminal matters are involved here, there were no material changes made to the applicable code sections during the relevant timeframe, and, therefore, the 2005 version of the Iowa Code will be referenced in this opinion.

As noted, FECR 1756854 and FECR 181426 included restitution plans prepared by the department that were never approved by the court. The amounts in those restitution plans could not be reduced to judgment against him.<sup>2</sup>

FECR 181426 also included a department restitution plan that was filed after Ross discharged his sentence. Section 910.7(2), addressing modification of restitution orders, states:

*After a petition has been filed, the court, at any time prior to the expiration of the offender's sentence, provided the required notice has been given pursuant to subsection 3, may modify the plan of restitution or the restitution plan of payment, or both, and may extend the period of time for the completion of restitution.*

(Emphasis added.) This provision precludes a post-discharge modification of a restitution plan. Read in conjunction with section 910.3, the provision also would necessarily preclude a district courts approval of an original plan of restitution after a defendant has discharged the sentence.

Based on this law, the parties essentially concede that restitution included in department restitution plans that were not approved by the district court prior to the discharge of Ross's sentences cannot be assessed as "restitution" in a post-discharge order. They further concede the amounts of restitution ordered by the district court in FECR 175684 and FECR 181426 included sums that were not previously approved by the district court.<sup>3</sup> They stipulate:

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<sup>2</sup> This conclusion relates only to the monetary amounts in the restitution plan. Substantive terms of supervision contained in restitution plans may be enforced during periods of parole or probation.

<sup>3</sup> The parties concede the restitution sum assessed in FECR 164800 was the subject of a pre-discharge order and was appropriately assessed.

[T]he amounts of restitution that have been approved of by the district court for the three cases are as follows:

|             |                         |
|-------------|-------------------------|
| FECR 164800 | \$481.93 <sup>[4]</sup> |
| FECR 175684 | \$1,015.00              |
| FECR 181426 | \$125.00                |

Based on the parties' stipulation and our review of the law, we conclude the district court assessed the correct amount of restitution in FECR 164800 but erred in including sums in FECR 175684 and 181426 that were not the subject of pre-discharge restitution orders.

### ***III. Disposition***

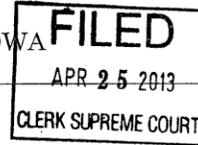
We affirm the 2012 restitution order as it pertains to FECR 164800 and reverse and remand for entry of restitution in the stipulated amounts in FECR 175684 and FECR 181426. We find it unnecessary to decide additional issues raised by the parties, namely whether the sheriff can recoup funds expended on room and board or whether additional costs that may result from post-discharge challenges may be recouped from Ross.

**AFFIRMED IN PART, REVERSED IN PART, AND REMANDED.**

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<sup>4</sup> The figure is slightly lower than the amount assessed by the district court in the 2012 order because Ross made restitution payments. A collection fee of \$50.08 that Ross contended was added after his discharge date was in fact a collection fee for the Department of Revenue that was backed out of the clerk of court's restitution calculation adopted by the district court and is therefore not in dispute.

IN THE SUPREME COURT OF IOWA




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|                      |   |                             |
|----------------------|---|-----------------------------|
| STATE OF IOWA,       | ) | SUP. CT. NO. 12-979         |
| Plaintiff-Appellee,  | ) |                             |
| vs.                  | ) | <b>JOINT STATEMENT OF</b>   |
| CHARLES ROSS,        | ) | <b>STIPULATED FACTS AND</b> |
| Defendant-Appellant. | ) | <b>STATEMENT OF</b>         |
|                      |   | <b>OUTSTANDING ISSUES</b>   |

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COMES NOW the State of Iowa, plaintiff-appellee, and Charles Edward Ross, defendant-appellant, pursuant to an order of the Iowa Court of Appeals dated April 19, 2013, and enters into the following joint statement of stipulated facts and statement of outstanding issues:

*A. Stipulated Facts.*

This case involves the amounts of restitution the defendant was ordered to pay in three cases from Polk County: FECR 164800, FECR 175684, and FECR 181426.

*FECR 164800.*

Following the defendant's guilty plea to third-degree theft (enhanced) in June of 2002, Ross was sentenced to two years in prison and ordered to pay restitution, court costs, and court-appointed attorney fees. App. 89, 63-64. At

the time he was sentenced, the amount of restitution was not available. App. 63-64.

On August 17, 2002, the district court entered a supplemental restitution order. App. 74. The order provided that the defendant pay \$125.00 in fines, penalties, and surcharges, \$193.46 in court costs, and \$202.50 in attorney fees. App. 74; *see* Attachment (Division I Table).

The defendant discharged his sentence on March 21, 2003. App. 79. In the fall of 2005, the Department of Corrections filed a restitution plan in FECR 164800. App. 76. Under this plan, the defendant was to pay \$550.87. App. 76. This amount was for fines (\$104.83), court costs (\$395.96), and other (\$50.08). App. 76.

*FECR 175684.*

In FECR 175684, the defendant pleaded guilty to two counts of third-degree burglary on September 4, 2003. App. 93-94. On October 9, 2003, he was sentenced to a five-year term of incarceration on each count and the sentences were imposed consecutive to one another. App. 59-60. The sentences were suspended and the defendant was placed on probation. App. 59-60. The court imposed and suspended a \$750.00 fine on each count plus surcharge, ordered him to complete 100 hours of community service, pay

court costs, attorney fees, and victim restitution which would be set in a supplemental order. App. 59-60. The defendant was also ordered to pay a \$125.00 law enforcement initiative surcharge. App. 59-60. On October 9, 2003, the district court entered a supplemental restitution order, and imposed victim restitution in the amount of \$890.00. App. 95; *see* Attachment (Division I Table).

In May of 2005, the Department of Corrections filed a restitution plan for the amount of \$1,992.87. App. 98. The plan set forth restitution for pecuniary damages (\$890.00), fines, penalties, and surcharges (\$125.00), and court costs (\$977.87). App. 98. It appears from the record that the plan was never approved by the district court. *See* Attachment (Division III Table).

In June of 2006, the Department of Corrections filed a restitution plan in the amount of \$1,983.74. App. 103. This amount was for costs (\$902.87), restitution (\$880.87), and “other” unspecified obligations (\$200.00). App. 103; *see* Attachment (Division III Table). There was no action taken on this restitution plan. The district court never entered an order approving the amount set forth in the restitution plan. The defendant discharged his sentence in FECR 175684 on August 4, 2006. App. 104.

*FECR 181426.*

In FECR 181426, the defendant pleaded guilty to one count of second-degree theft and one count of operating while intoxicated on March 8, 2004. App. 54-56. The district court sentenced the defendant on the same date to a five-year term of incarceration for the theft and a one-year term of incarceration for operating while intoxicated. App. 54-56; *see* Attachment (Division I Table). The terms were ordered to be served consecutive to each other and consecutive to the sentence imposed in FECR 175684. App. 54-56. The court suspended the sentences and placed the defendant on probation. App. 54-56. The court imposed and suspended a fine and surcharge, ordered the defendant to complete 100 hours of community service within the period of probation, and ordered that he pay court costs and attorney fees, in addition to the \$125.00 law enforcement initiative surcharge. App. 54-56.

In May of 2005, the Department of Corrections filed a restitution plan setting forth the amounts of restitution. App. 69. According to the plan, the amount of restitution owed was \$4328.88. App. 69. This was for fines, penalties, and surcharges (\$1,100) and court costs (\$3,282.88). App. 69. It appears from the record that the district court never approved this restitution

plan because there is no order approving the amounts. *See* Attachment (Division III Table).

On June 7, 2006, the Department of Corrections provided notice that the defendant discharged his theft sentence. App. 77. He discharged the sentence for operating while intoxicated in January of 2005. App. 78.

The Department of Corrections filed another restitution plan on June 8, 2006. App. 108. The amount of restitution owed under the plan was \$4373.81. App. 108. This was for costs (\$3,237.88) and “other” not specified obligations (\$1135.93). App. 108; see Attachment (Division III Table).

*2. Combined Restitution Challenges.*

In September of 2011, the defendant petitioned for a restitution hearing in FECR 164800, FECR 175684, and FECR 181426. App. 109-114. Ultimately, the court held a hearing on the request on January 17, 2012. App. 124-125.

Following the hearing and the court’s own investigation into the matter with information provided by the clerk’s office, the court found that the amounts due on each case were correct. App. 2-10. The court determined that the defendant owed the following amounts for each case:

|             |            |
|-------------|------------|
| FECR 164800 | \$ 481.93  |
| FECR 181426 | \$4,356.68 |

FECR 175684                      \$1,966.25

App. 2-10; *see* Attachment (Division I Table).

3. *Collectible Amounts.*

The restitution amount ordered by the district court in FECR 164800 is correct because the amounts of restitution were imposed pursuant to an order. On August 17, 2002, the district court entered a supplemental restitution order imposing restitution for fines, penalties, and surcharges (\$125.00), court costs (\$193.46), and attorney fees (\$202.50). App. 74; *see* Attachment (Division I Table).

The \$50.08 about which the defendant complained at the January 17, 2012 hearing was included in the restitution plan, but later subtracted by the clerk of court. App. 2-10, 42-43. Thus, the defendant has not been ordered to pay additional amounts of restitution in FECR 164800.

The same is not true for the cases involving FECR 181426 and FECR 175684. Prior to the discharge of the sentences in FECR 181426, the district court ordered the defendant to pay a \$125.00 law enforcement initiative surcharge. App. 54-56; *see* Attachment (Division I Table). In his original sentencing order, the court ordered the defendant to pay court costs and attorney fees, but those amounts were never set forth in an order of the

district court. *See* Trial Court papers. Although restitution plans were submitted both prior to and after the date of discharge of his sentences, these plans were also never approved and ordered by the district court. App. 69, 77-78, 108.

Likewise, in FECR 175684, when the district court sentenced the defendant on October 9, 2003, the court ordered him to pay a \$125.00 law enforcement initiative surcharge. App. 59-60. A supplemental order of restitution was filed and imposed victim restitution in the amount of \$890.00. App. 95. These are the only amounts of restitution that have been ordered by the court for FECR 175684. App. 59-60, 95; *see* Attachment (Division III Table). The Department of Corrections filed a restitution plan in May of 2005, however, that plan was never reduced to an order by the court. App. 98. Thus, the amounts of restitution that have been approved of by the district court for the three cases are as follows:

|             |                        |
|-------------|------------------------|
| FECR 164800 | \$ 481.93 <sup>1</sup> |
| FECR 181426 | \$ 125.00              |
| FECR 175684 | \$ 1,015.00            |

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<sup>1</sup>The original amount ordered was \$520.96. App. 74. The current amount reflects payments the defendant has made since his sentence was imposed.

App. 42-43, 54-56, 59, 69, 77-78, 95, 98, 108; *see* Attachment (Division I Table).

4. *Separate collection.*

Prior to the discharge of the defendant's sentences in FECR 181426 and FECR 175684, the Polk County Sheriff timely filed room and board reimbursement claims. App. 71-72, Room and Board Reimb. Claim (4/22/04). In FECR 181426, the Polk County Sheriff filed a request on April 22, 2004, but later amended the request on September 17, 2004, seeking room and board reimbursement in the amount of \$1355.17. Room and Board Reimb. Claim (4/22/04), App. 72. The record shows the district court did not enter an order on either claim; *see* Attachment (Division II Table).

Likewise, in FECR 175684, the Polk County Sheriff filed a room and board reimbursement claim on March 22, 2004 but later amended the claim on September 17, 2004 seeking room and board reimbursement in the amount of \$1355.17. App. 71-72. The record shows the district court did not enter an order on this claim. *See* Attachment (Division II Table).

In both instances, because the sheriff timely filed a room and board reimbursement claim prior to the expiration of the defendant's sentences in both FECR 181426 and FECR 175684, the district court may still rule upon

these applications and include these amounts as restitution under Iowa Code sections 356.7 and 910.2(1). Iowa Code § § 356.7 (5) and 910.2(1); *State v. Abrahamson*, 696 N.W.2d 589, 593 (Iowa 2005) (the district court “shall approve” the room and board reimbursement claim before it may be paid).

5. *Unresolved Costs.*

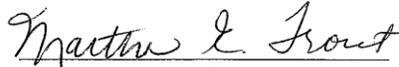
Because the defendant has discharged his sentences in all three cases, additional restitution amounts of “restitution” may not be assessed against him as that term is defined in chapter 910. That is not to say, however, that the defendant may avoid the taxation of additional costs that may result from the post-discharge challenges or from the costs associated with collecting delinquent court debt. Iowa Code § § 602.8107 and 625.1. For it to be collectible against the defendant as a judgment, these additional costs must be ordered, but they do not constitute “restitution.” It may also be proper to require the defendant to file a separate civil cause of action under chapter 610A to keep the judgment for costs separate from the judgment associated with the restitution orders in the underlying criminal actions. See Attachment (Division IV Table).

6. *Remaining issues.*

This questions presented in this appeal arose from the imposition of restitution amounts in the court's docketing system that were not ordered by the district court. Restitution, which includes court costs, attorney fees, and the room and board reimbursement claims must be ordered by the district court to be considered a valid judgment. Iowa Code §§ 356.7, 910.2, and 910.7A. Likewise, the additional costs incurred for a post-discharge challenge must be imposed by a court to be collectible. Iowa Code § 625.1.



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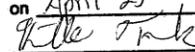
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**PROOF OF SERVICE**

The undersigned hereby certifies that a true copy of the foregoing was

- personally delivered
- mailed
- sent via telefax

to each party of record at their last know address

on April 25 2013  


Charles Ross Court Ordered Restitution in Polk County Case numbers FECR164800, FECR175684, and FECR181426. Item numbers of record.

These entries consist of two general types of financial claims: court ordered restitution, fines and court costs, sheriff's room and board claims properly submitted, and other items. Explanations and source of each line item is contained in the notes section in column 6. These items are keyed to the Appendix filed in this appeal which contains the relevant docket entries.

Restitution in this appeal is governed by Iowa Code Ch. 910 which defines restitution and Iowa Code §356.7 which defines the procedure by which sheriff's claims for room and board may become court ordered restitution.

Restitution is a term of art which establishes priority among claims against a convicted offender. To say that a claim is not restitution is not to deny its validity, but that requires that the claim creditor takes court ordered steps to achieve superpriority as "restitution".

Explanation of terms: TBD-to be determined

This table was prepared by Robert Luedeman, Attorney for appellant.

| DIVISION I:<br>Sentencing<br>orders and<br>supplemental<br>restitution<br>orders |         |                                   |                |                  |   |                              |
|--|---------|-----------------------------------|----------------|------------------|---|------------------------------|
| Item number  | Date    | Amount                            | Case<br>number | Appendix<br>page | Disposition                                   | Notes                        |
| 1  | 3-8-04  | \$750<br>fine<br>\$225<br>surch.  | 181426         | 54-56            | Suspended per<br>sentencing<br>order          |                              |
| 2  | 3-8-04  | TBD                               | 181426         | 54-56            | Court<br>appointed<br>attorney fees           | Court ordered<br>per Ch. 910 |
| 3  | 3-8-04  | \$125                             | 181426         | 54-56            | Law<br>Enforcement<br>Initiative<br>surcharge |                              |
| 4  | 3-8-04  | TBD                               | 181426         | 56               | Court Costs                                   |                              |
| 5  | 1-24-05 | TBD                               | 181426         | 57               | Court<br>appointed<br>attorney fees           |                              |
| 6  | 1-24-05 | TBD                               | 181426         | 58               | Court costs                                   |                              |
| 7  | 10-9-03 | \$1500<br>fine<br>\$450<br>surch. | 175684         | 59               | Suspended per<br>sentencing<br>order          |                              |
| 8  | 10-9-03 | \$125                             | 175684         | 60               | Law<br>Enforcement<br>Initiative<br>surcharge |                              |

|    |         |                        |        |    |                                |  |
|----|---------|------------------------|--------|----|--------------------------------|--|
| 9  | 10-9-03 | TBD                    | 175684 | 60 | Court costs                    |  |
| 10 | 10-9-03 | TBD                    | 175684 | 60 | Court appointed attorney fees  |  |
| 11 | 10-9-03 | \$890.00               | 175684 | 70 | Victim restitution             | Supplemental rest. order   |
| 12 | 1-24-05 | TBD                    | 175684 | 61 | Court appointed attorney fees  |  |
| 13 | 1-24-05 | TBD                    | 175684 | 61 | Court costs                    |  |
| 14 | 6-28-02 | TBD                    | 164800 | 63 | Court appointed attorney fees  |  |
| 15 | 6-28-02 | TBD                    | 164800 | 64 | Court costs                    |  |
| 16 | 8-16-02 | \$125 fine             | 164800 | 65 | Supplemental restitution order | Confirmed in DOC restitution plans APP. P. 66 9-3-02 and APP. P. 67 9-1-05 |
| 17 | 8-16-02 | \$193.46 court costs   | 164800 | 65 | Supplemental restitution order | Confirmed in DOC restitution plans APP. P. 66 9-3-02 and APP. P. 67 9-1-05 |
| 18 | 8-16-02 | \$202.50 Attorney fees | 164800 | 65 | Supplemental restitution order | Confirmed in DOC restitution plans APP. P. 66 9-3-02 and APP. P. 67 9-1-05 |

|   |         |            |                   |                |                         |  |
|---|---------|------------|-------------------|----------------|-------------------------|--|
| DIVISION II:<br>Sheriff's room and board claims in court record |         |            |                   |                |                         |  |
| 19  | 3-17-04 | \$1,355.17 | 181426 and 175684 | 72-see also 71 | Amended Sheriff's Claim |  |

|  |         |            |        |    |  |  |
|--|---------|------------|--------|----|--|--|
| DIVISION<br>III: DOC<br>restitution<br>plans which<br>are not<br>supported by<br>supplemental<br>orders, and<br>financials<br>downloaded<br>from the<br>Iowa Courts<br>Online<br>website |         |            |        |    |  |  |
| 20   | 6-12-06 | \$4,373.81 | 181426 | 68 |  |  |
| 21   | 4-21-05 | \$4,282.06 | 181426 | 69 |  |  |
| 22   | 5-3-05  | \$1992.87  | 175684 | 73 |  | Plan includes<br>victim<br>restitution<br>per<br>supplementary<br>order dated<br>10-9-03 P. 70 |
| 23   | 9-13-05 | \$550.07   | 164800 | 76 |  |  |
| 24   | 1-14-13 | \$1,945.37 | 175684 | 81 |  | Downloaded 1-<br>14-13   |
| 25   | 1-14-13 | \$523.96   | 164800 | 82 |  | Downloaded 1-<br>14-13   |
| 26   | 1-14-13 | \$4419.83  | 181426 | 83 |  | Downloaded 1-<br>14-13   |
|  |         |            |        |    |  |  |

|   |        |     |                              |   |  |  |
|---|--------|-----|------------------------------|---|--|--|
| DIVISION<br>IV: Court<br>costs for<br>combined<br>restitution<br>hearings |        |     |                              |   |  |  |
| 27  | 4-4-12 | TBD | 175684,<br>181426,<br>164800 | 3 |  | Court costs<br>not<br>specifically<br>ordered. |
|   |        |     |                              |   |  |  |